

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROQUE TERCERO-ARANDA,,

Petitioner,

No. CIV S-03-0460 MCE CMK P

vs.

GARY JOHNSON, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

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Petitioner, a Texas petitioner proceeding without counsel, filed a second amended petition for a writ of habeas corpus under 28 U.S.C. § 2254¹ in this court on April 26, 2004. On November 9, 2004, this court filed an order dismissing petitioner's second amended petition because he challenged convictions from two state courts, one in Texas and one in California, and under Rule 2(d) of the Rules Governing Section 2254 cases, a habeas petition may only challenge the judgment or judgments of a single state court. Petitioner was granted leave to amend within thirty days from the date of the order. To date, petitioner has not filed an amended petition.

Additionally, in his second amended petition, petitioner names as respondents "Gary Johnson and others Bill Lockyer, Jo Graves..." It appears from an internet search that

¹Petitioner purports to bring his habeas petition under 28 U.S.C. § 2241(c)(3); however, petitioner challenges convictions from state courts and challenges to state court convictions are properly asserted under 28 U.S.C. § 2254.

1 Gary Johnson retired in December 2004 from his position as the executive director of the Texas
2 Department of Criminal Justice, which he had held since 2001 and that Mr. Johnson was the
3 warden of the prison in which petitioner is incarcerated. See [http://www.tdcj.state.tx.us](http://www.tdcj.state.tx.us/announcements/announcement-johnson.htm)
4 [/announcements /announcement-johnson.htm; http://www.prisoncommission.org/public_hearing](http://www.prisoncommission.org/public_hearing_4_witness_johnson_gary.asp)
5 [_4 witness_johnson_gary.asp](http://www.prisoncommission.org/public_hearing_4_witness_johnson_gary.asp). Petitioner was warned when the court dismissed his amended
6 habeas petition, that if he named an incorrect respondent in his second amended petition, the
7 court would recommend dismissal of his petition.

8 In accordance with the above, IT IS HEREBY RECOMMENDED that petitioner's
9 application for a writ of habeas corpus be denied for failure to file an amended petition and for
10 failure to name the correct respondent in his second amended petition.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
13 after being served with these findings and recommendations, petitioner may file written
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendations." Petitioner is advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951
17 F.2d 1153 (9th Cir. 1991).

18 DATED: August 29, 2006.

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21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
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